

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LANCE P. McDERMOTT,

Case No. 15-cv-01069-RAJ

Plaintiff,

**FEDERAL DEFENDANT'S REPLY
IN SUPPORT OF HER MOTION
TO DISMISS**

MEGAN BRENNAN, Postmaster General, U.S. Postal Service, *et al.*

Defendants.

Defendant Megan Brennan, Postmaster General of the United States, filed a Motion to Dismiss plaintiff Lance McDermott's claims against the government and its employees on October 27, 2015, and served Plaintiff with a copy of the motion via U.S. Mail First Class *and* U.S. Certified Mail with return receipt requested. Dkt. No. 6. The motion was mailed to Plaintiff's address listed in the signature box of his Complaint, Dkt. No. 1 at p. 41, and the return receipt indicates that Plaintiff received a copy of the motion on November 3, 2015. Second Whitehead Decl., Ex. A. The motion's noting date was reset to November 20, 2015, meaning that Plaintiff's opposition papers, if any, were

FED. DEF.'S REPLY IN SUPPORT OF MOT.
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1 due on Monday, November 16, 2015. Local Civ. R. 7(d)(3) (“Any opposition papers shall
2 be filed and served not later than the Monday before the noting date. If service is by
3 mail, the opposition papers shall be mailed not later than the Friday preceding the
4 noting date.”).

5 Plaintiff filed nothing in response to Defendant’s motion, and his failure “may be
6 considered by the court as an admission that [Defendant’s] motion has merit.” Local
7 Civ. R. 7(b)(2). Plaintiff’s *pro se* status does not excuse his failure to respond since *pro*
8 *se* litigants are bound by the same rules of civil procedure governing other litigants.

9 *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming district court’s dismissal
10 of plaintiff’s action for failure to file opposition to defendant’s motion to dismiss). It
11 follows, then, that the Court should deem Plaintiff to have admitted the merit of
12 Defendant’s motion to dismiss, and that the motion should be granted.

13 Notwithstanding Plaintiff’s failure to file opposition papers, the Court should
14 dismiss Plaintiff’s claims against the Postal Service because his claims are barred by the
15 doctrine of *res judicata*, he failed to state a claim upon which relief can be granted, and
16 because the Court lacks jurisdiction to hear certain claims.

17 For the reasons stated above, and those discussed more fully in Defendant’s
18 moving papers (Dkt. Nos. 6-7), Defendant respectfully requests that the Court dismiss
19 Plaintiff’s claims against the Postal Service and its employees.

20
21 DATED this 20th day of November, 2015.

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23 Respectfully submitted,

24
25 ANNETTE L. HAYES
United States Attorney

26
27 s/ Jamal Whitehead

JAMAL WHITEHEAD, WSBA # 39818

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FED. DEF.'S REPLY IN SUPPORT OF MOT.
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the United States Attorney's Office for the Western District of Washington, and that I am of such age and discretion as to be competent to serve papers;

I further certify that on November 20, 2015, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participant(s):

Krisina Detwiler kdetwiler@unionattorneysnw.com

I further certify that on November 20, 2015, I mailed via United States Postal Service and U.S. Certified Mail, Return Receipt Requested the foregoing document to the following non-CM/ECF participant(s)/CM/ECF participant(s), addressed as follows:

Lance P. McDermott
Pro-Se
1819 S 104 Street
Seattle, WA 98168

Dated this 20th day of November, 2015.

s/ Tina Litkie
TINA LITKIE, Legal Assistant
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